Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1995

JEONG KYO LIM,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether there was sufficient evidence to sustain the Petitioner's conviction.

2. Whether there was sufficient independent evidence of a conspiracy to allow admission of wire-tapped statements of the co-conspirator.

3. Whether the use of false testimony of a Government witness violated the Due Process Clause of the Fourteenth Amendment.

4. Whether a jury instruction of "wilful blindness" with regard to the element of "knowledge" required to sustain a conviction for conspiracy violated the Due Process Clause of the Fourteenth Amendment.

5. Whether the court below committed clear error in refusing a downward departure in the sentencing guideline due to a "minor" or "mitigating" role in the offense.

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OPINIONS BELOW

The Third Circuit Court of Appeals issued a judgment order affirming Petitioner's conviction and did not render a written opinion. (Appendix A).

The District Court below denied the Petitioner's motion for judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29 in a ruling from the bench. (Appendix B). In denying the motion for acquittal, the District Court referenced its prior analysis in denying the Rule 29 motion made at the end of the Government's case. (Appendix C).

A motion to set aside the verdict based upon insufficiency of the evidence was also denied by the District Court in a brief written opinion that was not published. (Appendix D).

STATEMENT OF JURISDICTION

The judgment of the Third Circuit Court of Appeals affirming the judgment of the District Court below was entered on May 23, 1996. (Appendix A). Rehearing en banc was not sought.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Due Process Clause of the Fourteenth Amendment, United States Constitution, which provides:

> Section 1. . . . nor shall any state deprive any person of life, liberty, or property without due process of law; . . . .

2. The statute under which Petitioner was prosecuted was 18 U.S.C. § 1956, "Laundering of Monetary Instruments", which provides as follows:

> (a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—
>
> (A)(i) with the intent to promote the carrying on of specified unlawful activity; or
>
> (ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or
>
> (B) knowing that the transaction is designed in whole or in part—
>
> (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
>
> (ii) to avoid a transaction reporting requirement under State of Federal law,

shall be sentenced to a fine not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more that twenty years, or both.

The definitions as used in 18 U.S.C. § 1956 are at issue in this case and are set forth in 18 U.S.C. § 1956 (c) as follows:

> (c) As used in this section—
>
> (1) The term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in Paragraph (7);
>
> (2) The term "conducts" includes initiating, concluding, or participating in initiating or concluding a transaction;
>
> (3) The term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, though, or to a financial institution, by whatever means effected;
>
> (4) The term "financial transaction"

> means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.

Petitioner was specifically charged with conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(g), which provides as follows:

> (g) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

STATEMENT OF THE CASE

A. Course of Proceedings in This Case Now Before This Court.

On January 11, 1995, in a cause then pending in the United States District Court for the District of New Jersey, entitled *United States v. Jeong Kyo Lim*, Criminal No. 92-249, Petitioner was found guilty by a jury on a one count indictment charging violation of 18 U.S.C. § 1956(g) for Conspiracy to Commit Money Laundering.

Petitioner moved for a judgment of acquittal after the verdict, which was denied by the District Court in an unpublished opinion dated April 18, 1994. (Appendix D).

On May 25, 1994 the District Court entered judgment and Petitioner was sentenced to 84 months imprisonment. This judgment and sentence was affirmed by the Court of Appeals for the Third Circuit by Judgment Order dated May 23, 1996. (Appendix A).

Petitioner seeks review of the affirmance of the conviction and sentence, and outright reversal of the conviction.

B. Relevant Facts Concerning the Underlying Conviction for Conspiracy to Commit Money Laundering.

During Petitioner's criminal trial in the District Court, the Government offered a wire-tapped conversation of Petitioner wherein the caller asked for "Carlos Li" and advised that he had a "Mother's Day present" from John to deliver. The call was made to Petitioner's place of employment, Gateway Trading Center, a costume jewelry business in New York City. The name of Petitioner's boss was Chulos Lee. Petitioner advised the caller that the delivery should be made after 6:00 P.M., after the personnel were gone. The caller advised that was not possible and that he wanted to come in the afternoon, to which Petitioner replied "what else can I do". The wire-tapped conversation admitted at trial also included two calls placed by the caller prior to the conversation with Petitioner, wherein two individuals identified as "Christina" and "LuLu" were contacted to arrange for delivery of rum and coffee.

The caller was one William Colonia-Hernandez who was under physical surveillance by federal agents when he left his house after making the wire-tapped telephone calls. Colonia's

vehicle was stopped for a traffic violation and a consensual search of the vehicle produced a paper bag containing approximately $230,000 in cash. Of that cash, $200,000 was loose in the paper bag with a piece of paper with a notation "Jhou/ Carlos Li 200". Colonia was detained and during an interview a beeper on his person was removed. One of the phone numbers which was revealed on the paging device was that of Petitioner's place of employment, Gateway Trading Center.

Federal agents thereafter went to Gateway Trading Center and asked for "Carlos Li". Petitioner who does not speak English, responded "I'm Carlos" and was arrested. A business card was recovered from Petitioner which read "Gateway Trading Corporation" and "J. Carlos Lim, Vice President". At trial, a Government witness testified falsely that the card read "J. Carlos Li, Vice President". No action was taken by the Government or defense counsel to correct the false testimony of the Government witness.

A Government witness who had taken the Petitioner's post-arrest statement testified that Petitioner related a conversation with his boss Chulos Lee wherein they discussed a "suspicion" that the money received from Columbian customers was narcotics proceeds, however, they did not want to say anything because they did not want to lose the business.

The Government established that the money seized from Colonia was the proceeds of narcotics distribution by introducing the plea allocution of one Carlos Torres a/k/a Salsa Caliche who was involved in distributing approximately $12M a week in narcotics proceeds. The Government then introduced papers seized from Colonia which contained Caliche's telephone and beeper numbers.

Although the Government argued that Petitioner was the

sole individual responsible for the laundering of narcotics proceeds through Gateway Trading Center, no evidence was presented to demonstrate the method by which Petitioner was to purportedly launder the money that was seized from Colonia. The Government relied upon the testimony of a special agent of the Internal Revenue Service who testified regarding various methods of money laundering in general. No books, records or other evidence as to the methods of operation of Gateway Trading Center were introduced.

Petitioner testified that his job was that of a warehouseman who placed orders and completed invoices. The owner of Gateway Trading Center, Chulos Lee, did not testify. Petitioner adamantly denied that he was known as "Carlos Li".

In issuing its charge to the jury, the District Court gave an instruction of "wilful blindness" with regard to the element of knowledge required to find that Petitioner had "knowingly" joined a conspiracy with the intent to promote narcotics distribution.

Although the jury returned a guilty verdict on the single count of the indictment, there were no special interrogatories to ascertain the jury's findings with regard to the role which Petitioner was to have played in the money laundering scheme. At sentencing, the District Court denied the request for a downward departure in the sentencing guideline due to a "minor" or "mitigating" role in the offense, making a specific finding that Petitioner would wash money by sending jewelry to South America which would be exchanged by the recipient for cash.

C. Existence of Jurisdiction Below

Jurisdiction of the court below is based upon Petitioner's

conviction in the District Court for the District of New Jersey on a single count of conspiracy to commit money laundering, pursuant to 18 U.S.C. § 1956.

REASONS FOR GRANTING THE WRIT

The Court of Appeals has decided this case in a way that conflicts with the applicable decisions of the Court. We respectfully urge that this decision is erroneous and at variance with this Court's decisions in the following respects:

I.

THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN THE PETITIONER'S CONVICTION.

A. The Lack of "Wilful and Knowing" Involvement in the Conspiracy.

The gravamen of a conspiracy charge is agreeing with the intent of achieving a certain proscribed objective. It is essential to determine what kind of agreement or understanding existed as to each defendant. *Anderson v. United States*, 417 U.S. 211, 94 S. Ct. 2253, 41 L. Ed. 2d 20 (1974). When it is not shown that the unlawful objectives of one individual have been adopted by another, the latter cannot be found to have agreed to achieve the objective and a conspiracy count to do so cannot be sustained. *Yates v. United States*, 354 U.S. 298, 77 S. Ct. 1064, 1 L. Ed. 2d 1356 (1957).

In this case, the Government was required to prove beyond a reasonable doubt that Petitioner entered into an agreement to achieve the objective of the conspiracy, which was the laundering of narcotics proceeds. The wire-tapped testimony of Colonia and the use of coded language does not demonstrate the

requisite knowledge and understanding by Petitioner that he has agreed to participate in a conspiracy to launder narcotics proceeds. Similarly, the only other evidence linking Petitioner to Colonia and the charged conspiracy, is the note seized from Colonia providing "Jhou/Carlos Li 200", which does not sufficiently demonstrate an agreement that Petitioner has joined a conspiracy to conduct a financial transaction which would launder narcotics proceeds. The failure of the Government to identify the specific means by which such laundering was to occur, which is the objective of the conspiracy, demonstrates the lack of evidence regarding Petitioner's "agreement" to join the conspiracy. The Petitioner cannot be found to have agreed to achieve an objective for which the Government failed to introduce any evidence as to how the objective was to be achieved. The objective of the charged conspiracy was not merely to deliver illegal proceeds to Gateway Trading Center, for that alone does not accomplish the objective of the conspiracy, to launder narcotics proceeds in violation of 18 U.S.C. § 1956(g). The charged objective of the conspiracy which Petitioner was to have joined, was to launder such proceeds. There was absolutely no evidence of a money laundering operation being conducted at Gateway Trading Center to substantiate an agreement by Petitioner to join a conspiracy with that objective.

B. The Lack of a "Financial Transaction" Which Is a Requisite Element in a Conviction for Money Laundering.

Petitioner's activities do not amount to a "financial transaction" within the meaning of 18 U.S.C. § 1956(c)(3). The decision of the appellate court is in conflict with the decisions of other circuit courts which hold that the mere possession of illegal proceeds does not constitute a "financial transaction". *United States v. Puig-Infante*, 19 F.3d 929 (5th Cir. 1994); *United States v. Ramirez*, 954 F.2d 1035 (5th Cir. 1992). The Government

presented no evidence as to the disposition which Petitioner was to make of the proceeds, in the event they were ever received from Colonia. At most, the Government demonstrated that illegal proceeds were intercepted en route to Gateway Trading Center.

Although the definition of "transaction" in 18 U.S.C. § 1956(c)(3) includes a "delivery", Petitioner did not conduct a delivery in that he took no action to accept or arrange for delivery. Examples of conduct which evidence participation in a delivery would be by being a driver, or supplying a vehicle to accomplish a delivery or taking some physical action to accept the delivery such as meeting someone at a particular location. The receipt of a phone call in which the caller advises of the time of an intended delivery does not rise to the level of participating in a financial transaction sufficient to sustain a conviction pursuant to 18 U.S.C. § 1956(g).

C. The Lack of the Requisite Intent to Promote or Further the Specified Unlawful Activity of Drug Distribution.

The Government was required to demonstrate a specific intent by Petitioner to promote the specified unlawful activity of drug distribution, through the laundering of narcotics proceeds. As there is rarely direct evidence of a defendant's intent with regard to criminal acts, such intent is usually inferred from a defendant's conduct. At trial, the Government's theory was that the "intent to promote" element of the offense was to be inferred from defendant's "knowledge" that monies received from Columbian customers were proceeds of drug activities. However, the only evidence that Petitioner had such "knowledge" was the conversation between Petitioner and his boss Chulos Lee regarding a "suspicion" that drug money was involved in their accounts with Columbian customers. In fact, the Government argued that Petitioner was "wilfully blind" to

the use of drug proceeds and a "wilful blindness" charge was given to the jury with regard to element of knowledge.

The Petitioner's wilful blindness to the receipt of proceeds of narcotics distribution by Gateway Trading Center cannot substantiate the requirement of a specific intent to promote narcotics distribution. Inference of an intent to promote drug distribution based upon a mere suspicion of the involvement of drug proceeds in other transactions does not provide substantial evidence of an "intent to promote" drug distribution. In light of the fact that there was no demonstration of how the money laundering activity was to take place, there is no evidence of the activity that was intended by Petitioner which would promote the objective of the conspiracy. The Government's reliance on Petitioner's "knowledge", which is premised upon a "wilful blindness", to infer a specific intent to promote narcotics distribution requires irrational inferences which stretch the weight of the evidence to such an extent that it fails to sustain the Government's burden of proof to establish Petitioner's guilt beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

II.

THE LACK OF INDEPENDENT EVIDENCE OF A CONSPIRACY TO JUSTIFY THE ADMISSION OF WIRE-TAPPED STATEMENTS OF CO-CONSPIRATORS.

It has been well settled by this Court that hearsay declarations of co-conspirators are admissible against other members of the conspiracy only upon a sufficient showing, by independent evidence, that the conspiracy existed, that defendant and declarant were members thereof, and that the declarations were made in furtherance of the conspiracy. *United States v. Nixon*, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039

(1974). The trial court failed to comply with the Federal Rules of Evidence and conduct a Rule 104 hearing to determine the admissibility of the wire-tapped statements of Colonia. Had such a hearing been conducted, the only independent evidence to purportedly establish a link between Colonia and Petitioner was the note found in the bag of money seized from Colonia's vehicle. Not only does the note state "Carlos Li", while Petitioner's name is Lim, the employer of Petitioner Lim is named Chulos Lee. In light of the dearth of independent evidence demonstrating the Petitioner's membership in the conspiracy, the admission of the wire-tapped statements of the co-conspirators was an error so fundamental in nature that it deprived Petitioner of fundamental justice in violation of the Due Process Clause of the Fourteenth Amendment.

III.

THE KNOWING USE OF FALSE TESTIMONY BY A GOVERNMENT WITNESS.

This Court has previously held that if a prosecutor uses testimony it knows or should know is perjury, it is fundamentally unfair to an accused. *United States v. Agurs*, 427 U.S. 97, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976). This Court recognizes the same is true when the Government, although not soliciting false evidence, allows it to go uncorrected when it appears at trial. *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972).

The false testimony by a Government witness regarding the business card seized from Petitioner, in which the witness falsely testified that the card provided the name "Li", pertained to an issue of fundamental importance in this case. The attribution of the name "Li" to the Petitioner establishes a link, which is false, between Petitioner and the note found in Colonia's vehicle which

stated "Jhou/Carlos Li 200". The Government was required to establish that Petitioner was "Carlos Li". The false testimony of the Government witness established a patently false association between Petitioner and the name "Carlos Li" found on the note seized from Colonia. In light of the fact that the Petitioner's employer was named Chulos Lee, and the scarcity of any other evidence of Petitioner's participation in the conspiracy, such an error is likely to have weighed heavily in the jury's decision, resulting in a violation of the Due Process Clause of the Fourteenth Amendment.

IV.

THE USE OF A "WILFUL BLINDNESS" CHARGE TO MEET THE ELEMENT OF KNOWLEDGE REQUIRED TO SUSTAIN A CONVICTION FOR CONSPIRACY.

While trial counsel did not object to the form of the instructions, where an error is so fundamental that the instruction does not properly submit to the jury the essential elements of the charged offense, there is plain error and the interests of justice and fair play demand that the Court take note. *Anderson v. United States,* 417 U.S. 211, 94 S. Ct. 2253, 41 L. Ed. 2d 20 (1974).

In delivering its charge to the jury on the first element of the offense, the Court instructed the jury with regard to the element of "knowledge" as follows:

> A person acts knowingly when he or she is conscious and aware of his or her actions, realizes what he or she is doing and does not act because of ignorance, mistake of accident. The element of knowledge may be satisfied by proof beyond a reasonable doubt

> that a defendant deliberately closed his or her eyes to what would otherwise have been obvious to him.

When addressing the second element of the offense, that the defendant "knowingly and wilfully became a member of the conspiracy and intended to advance the unlawful objectives of the conspiracy", the District Court instructed the jury "A few minutes ago I defined 'knowingly' for you. Please refer to those instructions here."

The instruction of wilful blindness to satisfy the element that Petitioner "knowingly" joined a conspiracy which has the objective of promoting narcotics distribution, created a permissive inference that violated the Due Process Clause. A permissive inference violates the Due Process Clause if the suggested conclusion is not one that reason and common sense justify in light of the proven facts before the jury. *Ulster County Court v. Allen,* 442 U.S. 140, 99 S. Ct. 2213, 60 L. Ed. 2d 777 (1979). The instruction that defendant could be found to have "knowingly" joined the conspiracy while being blind to its objectives is a conclusion suggested by the Court's instruction which not only defies common sense but undermines the factfinder's responsibility to find the ultimate facts of the case beyond a reasonable doubt. *Ulster County Court, supra.* Accordingly, the jury charge does not comport with the requirements of the Due Process Clause of the Fourteenth Amendment.

V.

THE FAILURE TO ACCORD A "MITIGATING ROLE" UPON PETITIONER, TO PERMIT A DOWNWARD ADJUSTMENT IN THE GUIDELINE OFFENSE LEVEL.

In the event the foregoing reasons for granting a writ of certiorari are denied, Petitioner submits that the refusal of the District Court to grant a downward adjustment in the sentencing guidelines for a minor or minimal participation, or the intermediate alternative, constitutes clear error. The denial of a downward adjustment for a minor or minimal participation "involves a determination that is heavily dependant upon the facts of the particular case." U.S.S.G. § 3B 1.2, comment (backg'd). It is acknowledged that a demonstration of clear error must be made to warrant reversal. *United States v. Price*, 13 F. 3d 711 (3d Cir. 1994), *cert. denied*, __ U.S.__ (1994).

In the event the facts presented and the Government's arguments, could have warranted a finding that Petitioner agreed to conduct a financial transaction with the proceeds from narcotics distribution, under no scenario was the evidence sufficient to substantiate that Lim was solely responsible for the laundering of narcotics proceeds at Gateway Trading Center.

At sentencing, the District Court found that Petitioner's role in the scheme was that Petitioner would wash money by "jewelry which was then sent to South America, and when the jewelry reached South America, an equivalent amount, the recipient would then cash in and exchange the jewelry for money.". There was no evidence introduced at trial to support such supposition, yet the District Court found at sentencing that Petitioner was "a major conduit in the transportation of this money or its equivalent back home". The District Court relied upon these

findings to deny a reduction for a "mitigating" or "minor" role in the offense. This is an erroneous factual finding in light of the evidence presented, constituting clear error which requires that the sentence of Petitioner be vacated.

CONCLUSION

The judgment below departs from decisions of this Court which requires that the conviction be set aside. This petition for a writ of certiorari should for all of the foregoing reasons be granted.

Respectfully submitted,

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APPENDIX A — JUDGMENT ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED MAY 23, 1996

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-5372

UNITED STATES OF AMERICA

v.

JEONG KYO LIM, a/k/a Carlos Li, a/k/a Carlos Lim, Jeong Kyo Lim,

Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 93-cr-00249-2)
District Judge: Hon. Harold A. Ackerman

Submitted Pursuant to Third Circuit LAR 34.1(a)
May 20, 1996

Before: SLOVITER, *Chief Judge*
SAROKIN and ROSENN, *Circuit Judges*

JUDGMENT ORDER

After consideration of all contentions raised by appellant, to wit

1. There was insufficient evidence to support the jury's

finding that defendant Lim was guilty on the sole count of the indictment.

2. The court committed plain error in admitting the hearsay statement of co-conspirators, and thus appellant's conviction must be reversed (not raised below).

3. Appellant's conviction was fundamentally unfair and must be set aside because it was obtained by the knowing use of false testimony which presents a reasonable likelihood of affecting the judgment of the jury (not raised below).

4. Appellant's conviction must be set aside based upon the ineffective assistance of counsel in failing to correct the false testimony of the government's witness (not raised below).

5. The court's charge was capable of misleading the jury and thus, appellant's conviction must be reversed (not raised below).

6. The court erred in denying a downward adjustment in the guideline offense level on the basis of playing a mitigating role,

It is ADJUDGED and ORDERED that the judgment of the district court entered May 26, 1995 be and is hereby affirmed, except that appellant's claim of ineffective assistance of counsel is dismissed without prejudice because this court ordinarily does not entertain such claims on direct appeal, and instead reviews such claims through an appeal from a collateral proceeding in which the factual basis for the claim may be developed. *See United States v. Theodoropoulos*, 866 F.2d 587, 598 (3d Cir. 1989).

Appendix A

By the Court,

s/ D.K. Sloviter
Chief Judge

Attest:

s/ Bradford A. Baldus
Bradford A. Baldus, Chief Deputy Clerk

Dated: May 23, 1996

Certified as a true copy and issued in lieu
of a formal mandate on June 14, 1996

Teste: s/ P. Douglas Sisk

Clerk, United States Court of Appeals
for the Third Circuit

APPENDIX B — BENCH RULING OF THE DISTRICT COURT DENYING MOTION FOR JUDGMENT OF ACQUITTAL

[Commencing at page 572]

* * *

Having finished presenting their evidence — his evidence, I should say, the defendant has now made a motion for judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29. And in analyzing the law, which I should turn to, I repeat what I said previously in citing the cases that I did previously and the standard of law that I enunciated previously.

And having done this at this juncture, I find that "a reasonable mind might fairly conclude that [Mr. Lim] is guilty beyond a reasonable doubt." And for this reason, I hereby deny his motion for judgment of acquittal.

APPENDIX C — BENCH RULING OF THE DISTRICT COURT DENYING MOTION FOR JUDGMENT ACQUITTAL AT CLOSE OF GOVERNMENT'S CASE

[Commencing at page 467]

* * *

THE COURT: . . .

At the close of the government's case the defendant, Mr. Lim, has moved pursuant to Rule 29 of the Federal Rules of Criminal Procedure for a judgment of acquittal.

In ruling on their motion the key question this Court must answer "is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could [find] the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *see also Glasser v. United States*, 315 U.S. 60, 80 (1941); *United States v. Castro*, 776 F.2d 1118, 1125 (3d Cir. 1985).

Or as the late Judge Prettyman had stated, the trial judge "must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt." *See Curley v. United States*, 160 F.2d 229, 232-33 (D.C. Ct. of App. 1947) (*quoted in United States v. Gross*, 375 F. Supp. 971, 973 (D.N.J.), *aff'd*, 511 F.2d 910 (3d Cir. 1974), *cert. denied*, 423 U.S. 924 (1975)).

Applying the standard to a careful review of the evidence presented by the government, I find that "a reasonable mind

might fairly conclude that Mr. Lim is guilty beyond a [468] reasonable doubt."

I don't think it's necessary for me to extensively review the evidence. I want merely to say that as I listened to the evidence, and applying the standard which I've just cited, it reminds me of a jigsaw puzzle, a piece here and a piece there and a piece here and a piece there, and if you have all the pieces, a picture begins to emerge. And for the purposes of this motion, I find that a rational trier of the fact could find, from the evidence that has been presented, from the evidence, the direct evidence, the circumstantial evidence, that Mr. Lim is guilty beyond any reasonable doubt.

You have a very — if you believe in applying this standard, if you believe the evidence, you have a — what I described previously as a very sophisticated operation. I mean, we have evidence before us — before this jury I should say — this operation was good for at least a half million dollars a day. That's what it appears to be. That's not a small amount of money.

And it all started — at least this case started with someone looking in Mr. Colonia's garbage outside and finding all these sheets. And a rational trier of the fact could conclude that the Internal Revenue Bureau, its investigative arm, D. E. A., and other law enforcement authorities, could rationally conclude that people were involved in the transportation of money derived from unlawful activity. And there is a very [469] strong suggestion here that this unlawful activity was narcotics.

I said that because we had even a dog sniffer brought into the picture, and he started barking and biting, doing all the things that indicate this contraband that was seized was tainted with narcotics literally.

Appendix C

And so you had — you have evidence before this jury that this fellow Colonia, who apparently kept very careful books, which he deserves much credit, and I assume he received same, and he also received allegedly six-tenths of one percent, and if he got that every day, that isn't bad. That is not bad. That's almost 20,000 a week. A sum, I imagine, that a lot of people would want to earn if it were legitimately acquired.

In any event, breaking the law can be a dangerous business, but sometimes it brings big rewards. So a jury could conclude here that Mr. Colonia, who not only kept good books but knew how to allocate the money, was a deliverer, but before he delivered, we have Exhibits 1(a), 2(a) and 3(a) to three phone conversations.

And one of the conversations allegedly with the defendant, in which we have testimony that code words were used, Mother's Day gifts, rum, coffee, when his car was ultimately stopped in Union City, New Jersey on the day those calls were made, over $200,000 was found in a shopping bag.

Now, as I said yesterday — and I was being slightly [470] facetious — there are some people who like to carry around a lot of money on their person. I'm looking at a plastic bag which is chuck full of what looks like United States currency, and there is evidence to the effect that this currency was counted on a counting machine, by the government, amounts to $200,000. And there is paperwork to corroborate the fact that $200,000 was to be delivered by Mr. Colonia to an individual named Carlos Li.

And I believe that there is certainly sufficient evidence to indicate that the defendant and Mr. Carlos Li were one in the same persons. The phone conversation in which Mr. Colonia

called a Mr. Lee at Gateway Trading, where Mr. Lim worked, and there's testimony that this was his voice, and Mr. Colonia went on his way to deliver the 200,000, presumably, if the government's case is to be believed, and certainly at this juncture I must, in applying the standard, I should accept it, he was going to deliver the money.

There is direct and circumstantial evidence to indicate that the defendant, if he received it, and he did not on this particular day, knew that the proceeds, these proceeds were involved in what is called money laundering. Now, we had an expert on the stand explaining what is meant by that term and the various ways in which criminals proceed to return the money to those who have brought drugs to this country, without inviting suspicion on the part of the government, in various [471] ways.

And the expert told us about C. T. R.s, other financial forms issued by the government, so that the watermark appears to be $10,000 in terms of cash. But there are various other ways in which money can be laundered. And when you deal with the criminal mind, many criminals stay ahead of law enforcement. They are very intelligent people.

In this case the money was — this large sum of money was not delivered, but Mr. Colonia was arrested — he was detained and then arrested, and then his house was searched and other moneys were found and other sheets were found, all of which, all of which suggest a conspiracy. It suggests a conspiracy, a plan, a criminal plan to launder moneys which are the product of unlawful activity.

I don't even think this is a close case at this juncture. So I have no hesitation in denying the motion for acquittal.

* * *

APPENDIX D — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY FILED APRIL 19, 1995

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Cr. No. 93-249
(HAA)

UNITED STATES,

Plaintiff,

v.

JEONG KYO LIM,

Defendant.

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Appendix D

OPINION & ORDER

Ackerman, D.J.

This matter comes before the court upon a motion by defendant Jeong Kyo Lim to set aside the verdict. This matter went to trial in January and a jury returned a verdict finding defendant guilty of one count of conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(g).

Defendant argues that "[t]here was insufficient evidence as a matter of law to have warranted submitting this case to the jury." Defendant's Br. at ¶ 1.

When determining if there was sufficient evidence, the relevant inquiry is "whether, viewing the evidence in a light most favorable to the government, there was substantial evidence upon which a reasonable jury could have based its verdict." *United States v. Pungitore,* 910 F.2d 1084, 1128-29 (3d Cir. 1990), *cert. denied,* 500 U.S. 915 (1991) (citing *Burks v. United States,* 437 U.S. 1, 16 (1978) in which the Supreme Court stated that "[t]he prevailing view has long been that a district judge is to submit a case to the jury if the evidence and inferences therefrom most favorable to the prosecution would warrant the jury's finding the defendant guilty beyond a reasonable doubt"). "The evidence need not unequivocally point to the defendant's guilt as long as it permits the jury to find the defendant guilty beyond a reasonable doubt." *Pungitore,* 910 F.2d at 1129 (citations omitted).

In this case, defendant Lim was convicted of knowingly and willfully inspiring with William Colonia-Hernandez and others to engage in money laundering, in violation of Title 18, United

States Code, Section 1956(g). The two essential elements of the crime for which Mr. Lim was convicted, and therefore, the two elements which the jury must have found beyond a reasonable doubt are: (1) an agreement to conduct financial transactions involving the proceeds of narcotics distribution, with the intent to promote the carrying on of narcotics distribution, and knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity; and (2) that the defendant knowingly and willfully became a member of the conspiracy AND intended to advance the unlawful objectives of the conspiracy.

After presiding at the trial in this matter, and after viewing and reviewing all the evidence introduced by the parties in a light most favorable to the government, I conclude that there was substantial evidence upon which a reasonable jury could have based its verdict.

THEREFORE IT IS ON THIS 18th day of April, 1995

ORDERED that the motion for to set aside the verdict is denied.

s/ Harold A. Ackerman
Harold A. Ackerman, U.S.C.J.